

No. 83-1304

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

EMMA LEE PAUL,

Petitioner,

vs.

ALEX HALEY, DOUBLEDAY & COMPANY, INC.,;
DOUBLEDAY PUBLISHING CO., INC.,; AMERICAN
BROADCASTING COMPANIES, INC.,; and DELL
PUBLISHING CO., INC.,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM OPPOSING CERTIORARI

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Counsel for Respondents

*Alex Haley, Doubleday & Company,
Inc., Doubleday Publishing
Company (erroneously denominated
in the caption as Doubleday
Publishing Co., Inc.), and Dell
Publishing Co., Inc.*

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The petition for certiorari,
contains two arguments: 1) that it is
improper to dismiss pendent state law
claims without consideration of whether

such claims may be barred from adjudication in the state court by reason of the statute of limitations defense and 2) that it is improper in a copyright infringement action to grant summary judgment for defendant based on patent lack of similarity.

With respect to the first argument, petitioner has overlooked §205(a) of the New York Civil Practice Law and Rules which provides:

(a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if he dies, and the cause of action survives, his executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action.

That statute has been held to apply to causes of action, as here, dismissed in Federal Court for lack of subject matter jurisdiction. E.g., George v. Mt. Sinai Hospital, 47 N.Y.2d 170, 177, 417 N.Y.S.2d 231, 236 (1979); Icelandic v. Canadair, 104 Misc.2d 239, 428 N.Y.S.2d 393 (S. Ct. N.Y.Co. 1980).

With respect to the second argument, the opinion of the Second Circuit Court of Appeals (See Petition A-23 to A-30 at A-28 to A-30) establishes that this argument does not warrant review by this Court.*

Therefore, the petition for a writ of certiorari should be denied.

* Pursuant to the listing requirement of Rule 28.1 of the Supreme Court Rules, Doubleday Sports, Inc. is a subsidiary of Doubleday & Company, Inc. which is not wholly owned.

Dated: New York, New York
March 8, 1984

Respectfully Submitted,

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& Company, Inc.,
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